

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

STATE OF TEXAS, *et al.*,

*Plaintiffs,*

v.

BUREAU OF ALCOHOL, TOBACCO,  
FIREARMS AND EXPLOSIVES, *et al.*,

*Defendants.*

Civil Action No. 6:23-cv-00013

**DEFENDANTS' UNOPPOSED MOTION  
TO STAY THEIR OBLIGATION TO RESPOND TO THE COMPLAINT**

Defendants respectfully move to stay their obligation to respond to plaintiffs' complaint, ECF No. 1. Defendants' response deadline is currently October 10, 2023. *See* Order, ECF No. 60.

Plaintiffs commenced this action in February 2023, challenging a rule promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), *Factoring Criteria for Firearms With Attached "Stabilizing Braces,"* 88 Fed. Reg. 6,478 (Jan. 31, 2023) ("Rule"). ECF No. 1. The next month, plaintiffs filed a motion for a preliminary injunction, ECF No. 16. The Court eventually granted that motion, enjoining enforcement of the Rule pending resolution of an appeal in the related case of *Mock v. Garland*, No. 23-10319 (5th Cir.), *see* Order, ECF No. 51, and stayed proceedings in this matter to await the Fifth Circuit's decision in that appeal, *see* Order, ECF No. 65.

In September, after the Fifth Circuit issued its decision in *Mock*, the Court ordered the parties to submit supplemental briefing on plaintiffs' preliminary-injunction motion. *See* Order, ECF No. 72. To give it time to review the parties' briefing and to draft an order on that motion, the Court entered a temporary administrative stay of the Rule's enforcement against plaintiffs through October 20, 2023. *Id.* On September 25, the Fifth Circuit issued its mandate in *Mock*, thereby ending the stay of

proceedings in this case, *see* Order, ECF No. 65, and establishing October 10 as defendants' deadline to respond to the complaint, *see* Order, ECF No. 60 (setting defendants' response deadline two weeks after the stay of proceedings expires).

Defendants respectfully submit that, because this case can and should be resolved on cross-motions for summary judgment presenting pure questions of law, it is unlikely that an answer to the complaint will be necessary. Accordingly, in the interest of conserving the government's resources, defendants respectfully request that the Court stay their obligation to respond to the complaint until after the Court resolves the parties' anticipated summary-judgment motions. Defendants conferred with plaintiffs, and plaintiffs do not oppose this request.

Defendants appreciate the Court's consideration and respectfully request entry of their proposed order.

Dated: October 6, 2023

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General

BRIGHAM J. BOWEN  
Assistant Branch Director

/s/ Jody D. Lowenstein  
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**CERTIFICATE OF SERVICE**

On October 6, 2023, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Southern District of Texas, using the Court's electronic case filing system. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Jody D. Lowenstein  
JODY D. LOWENSTEIN  
Trial Attorney  
U.S. Department of Justice